Unions and Discrimination

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The claim that organized labor has been a force for racial egalitarianism can only be called a myth. It is one of the many myths that pro-union historians have perpetuated—similar to those, for example, that unorganized workers suffered from an "inequality of bargaining power" (Reynolds 1991), that strikes are conflicts between employers and employees rather than between different groups of employees, or that violence was more often employed against than by unions (Thieblot and Haggard 1983). Perhaps the greatest myth of all is that organized labor is good for workers generally. In fact, unions transfer income from the unorganized to the organized, and depress total income to such a degree that even organized workers are poorer (Vedder and Gallaway 2002).

This article gives an account of the ways in which unions have used racial discrimination as an economic weapon. Before the Civil War, labor leaders claimed that the classical liberal, antislavery vision of "free labor" actually established "wage slavery" for white workers. The former slaves, excluded from white unions, often had to fight their way into industrial employment as strikebreakers. Organized labor lobbied for decades for special legislation that would enable them to make their strikes effective. When they finally achieved this in the New Deal, the federal government faced the problem of securing "fair representation" for black workers. This ended up producing affirmative action after the enactment of the Civil Rights Act of 1964.

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The "Divide and Conquer" Legend

The *New York Times* recently profiled Richard Trumka, a United Mine Workers official and now American Federation of Labor-Congress of Industrial Organizations president. The story displayed a photo of Mr. Trumka in front of a portrait of Mary Harris ("Mother") Jones, a heroine of organized labor after whom the left-wing magazine was named. It featured a speech that Trumka gave to a steelworkers' convention, in which he claimed, "There's no evil that's inflicted more pain and more suffering than racism—and its something we in the labor movement have a special responsibility to challenge…. Because we know, better than anyone else, how racism is used to divide working people" (Greenhouse 2009).

Trumka was repeating one of the hoariest myths in the history of the American labor movement. Usually calling it the "divide and conquer" tactic, labor leaders claim that employers have deliberately fomented racial animus among their workers, in order to keep the "working class" disunited and weak. Trumka's UMW is particularly proud of having established a successful interracial union in the face of such employer tactics. He is not likely to tell stories like those of the Illinois coal strike of 1898. When an agreement between the UMW and the mine owners expired, the UMW went on strike, and violently prevented black workers from taking their former jobs. The union had the full support of Illinois Governor John R. Tanner, who swore that he would use the state militia to "shoot to pieces with Gatling guns" any train bringing in black workers. The militia captain in Pana, Illinois, pledged his support. "If any Negroes are brought into Pana while I am in charge, and they refuse to retreat when ordered to do so, I will order my men to fire," he pledged. "If I lose every man under my command no Negroes shall land in Pana." Several black miners were murdered in the ensuing weeks. The AFL passed a resolution praising Governor Tanner (who had been indicted by a grand jury for allowing the situation to get out of control), and "Remember Pana" became a UMW slogan. Mother Jones asked to be buried nearby those "responsible for Illinois being the best organized labor state in America" (Moreno 2006: 61–63, Gorn 2001: 289). While it is true that the UMW succeeded in many places in establishing interracial unions—and in Alabama, at least, in the face of genuine "divide and conquer" tactics by the mine owners—in Illinois the "near invisibility" of blacks in UMW offices "served as a reminder to black miners of just

how successful whites had been in blocking their entry into the coalfields above the Ohio River" (Lewis 1987: 100).

The Illinois UMW was just one example of the fact that race was much less often used *against* as *by* organized labor. Race was a convenient way to do what unions do. Unions are, in economic terms, cartels. Their goal is to insulate their members from competition, to increase the price of their product (wages) and lower its output (hours). Unions do this by "controlling the labor supply." And one of the most convenient ways to do this is to exclude easily identified groups like racial minorities (Becker 1971, Posner 1984, Reynolds 1984). The South African economist W. H. Hutt was among the first to observe this phenomenon. While racial animus certainly was a factor in labor-market discrimination, "We do not, however, find color prejudice as such the main origin—nor, perhaps, even the most important cause—of most economic color bars. The chief source of color discrimination is, I suggest, to be found in the natural determination to defend economic privilege" (Hutt 1964: 27). South Africa's Mines and Works (Colour Bar) Act of 1911 was passed to appease white union members' demand to abate black competition. When the owners continued to employ black miners, the "Rand Rebellion" of 1922 ensued, "one of the bloodiest labor disputes ever to occur anywhere in the world," followed by more restrictive legislation to reserve jobs for white unionists in 1924 (Sowell 1990: 27).

Free Labor and "Wage Slavery"

In colonial and antebellum America, groups of white workers often petitioned state and local governments to eliminate competition from free black workers. Organized labor was largely hostile to the antislavery movement, and most abolitionists opposed unions. Understandably, white workers feared competition from emancipated slaves, and white workers in the North especially feared an influx of southern freedmen. This is one of the reasons for which Lincoln continued to say that he was in favor of "colonization" of the black American population, and reassured northerners that free blacks would not glut the labor market and depress wages. He told Congress in 1862, shortly before the Emancipation Proclamation took effect, that free blacks would likely supply *less* labor than they had as slaves, and thus *increase* white wages. "With deportation, even to a limited extent," he said, "enhanced wages to white labor is math-

ematically certain. Labor is like any other commodity in the market—increase the demand for it, and you increase the price of it. Reduce the supply of black labor, by colonizing the black laborer out of the country, and, by precisely so much, you increase the demand for, and wages of, white labor" (Lincoln 1953-55, IV: 535).

More fundamentally, antebellum labor leaders disputed the argument that chattel slavery was really any worse that the free-labor system of the North (or Great Britain), which they called "wage slavery." Here they echoed the arguments of slavery advocates like John C. Calhoun and George Fitzhugh, who claimed that chattel slavery was more humane and just than wage-labor market competition. Slavery provided a kind of cradle-to-grave welfare state for its workers, because owners had a permanent economic interest in the whole person, while northern employers had only a temporary interest in the worker while he was productive and exploitable. This view of the moral equivalence of slave labor and wage labor led some cynical Europeans to observe that the Civil War was nothing more than a disagreement between one group of capitalists who wanted to own their slaves and another group of capitalists who wanted to rent their slaves by the hour. Labor leaders claimed that northern antislavery advocates failed to see that capitalism actually gave employers so much economic power that they did not need physical coercion in order to dictate terms to their workers. This was the principal argument in favor of union power—unions provided a countervailing power to that of organized employers. Unions "leveled the playing field," and were necessary to address the fact of unequal bargaining power (Hale 1923, Reynolds 1991).

For their part, abolitionists dismissed the argument that equated chattel slavery and wage slavery. They emphasized the individual right of "self-ownership" and the absence of physical coercion as the definition of freedom. William Lloyd Garrison viewed such union complaints as apologies for slavery, and Frederick Douglass entitled one of his editorials "The Folly, Tyranny and Wickedness of Labor Unions" (Douglass 1874). Douglass had personal experience with organized labor discrimination, having worked as a ship caulker in New Bedford, where the white caulkers insisted that blacks be limited to unskilled labor (McFeely 1990: 79). A white caulkers union similarly drove black rivals off the Baltimore wharves shortly after the Civil War (Thomas 1974: 2). The District of Columbia typographers union blackballed Frederick Douglass' son, Lewis Douglass, because

he had worked as a "rat" (nonunion member) in Denver (Matison 1948: 449–50). In other words, black workers who were forced to do nonunion work then had their "ratting" used as an excuse to deny them membership.

For the most part, American labor leaders failed to confront the issue of racial discrimination in the 19th century. Many of them recognized that exclusion might benefit white union members in the short term, but in the long term it would weaken union power because eventually employers would draw on lower-cost black workers, particularly to break strikes. William H. Sylvis, for example, head of the first nationwide labor federation, the National Labor Union, urged that blacks be brought into the movement, because emancipation meant that "we are now all one family of [wage] slaves together" (Grossman 1945: 229–32). He warned, "The time will come when the Negro will take possession of the shops if we have not taken possession of the Negro" (Foner and Lewis 1978–84, I: 407). The NLU convention, however, claimed that, since its constitution did not mention race, there was no need for the convention to address the issue. This left the question of membership to national and local unions. This illustrated a fundamental feature of organized labor in America: leaders of labor *federations* were often racially egalitarian (at least by contemporary standards), but had little influence on the national and local unions that composed these federations. These unions more often sought "to take possession of the Negro" by enforced exclusion. As a recent history has aptly observed, "White workers understood that excluding African Americans undermined labor solidarity and made it much more difficult for their unions to negotiate successfully with railroad management. They accepted this vulnerability because the alternative of sharing their organizations with African Americans seemed even worse" (Bernstein 2001: 47).

The Knights of Labor under Terrence V. Powderly also voiced racial inclusion—except for the Chinese, the curtailing of whose immigration the Knights supported. The Knights had many black members, most of them in segregated locals. Some black members favored segregated locals because they allowed blacks to win elections as delegates to state and national assemblies. But the Knights of Labor rose and fell almost overnight. Its ideology was rather quaint—its formal title was the "Noble and Holy Order of the Knights of Labor"; it sought the abolition of wage labor along with other social reforms—liquor dealers were excluded from membership along with

bankers and stockbrokers. The federation opposed the use of the strike, the method favored by the trade unionists. It collapsed rapidly after the anarchist Haymarket bombings of 1886 tainted the reputation of all labor organizations. Its successor, the AFL, similarly punted when faced with the race issue. Samuel Gompers, the federation president for every year but one from 1886 until 1924, recognized the problem of black exclusion leading to white union failure. But he habitually bowed to member unions who were determined to draw the color line. The AFL kept the National Association of Machinists out of the federation because of its constitutional color bar, but then let it in after the union shifted the racial exclusion from its constitution to its initiation ritual (Mandel 1955: 34–37). Later, the federation ceased requiring even gestures like these. Blacks were relegated to "federal" union status, at the mercy of the larger national unions, who thus "took possession of the Negro." Gompers dismissed black workers' pleas for equal treatment as demands for "special treatment" (Foner and Lewis 1978–84, IV: 10). When black workers continued to act as strikebreakers, Gompers threatened, "The Caucasians are not going to let their standard of living be destroyed by Negroes, Chinamen, Japs, or any other…. If the colored man continues to lend himself to the work of tearing down what the white man has built up, a race hatred worse than any ever known before will result. Caucasian civilization will serve notice that its uplifting process is not to be interfered with in any such way" (Foner and Lewis 1978–84, V: 124).

Gompers' tirade serves as a reminder that blacks were only one group that American unions sought to keep out of the work force. Organized labor led the movement for the restrictions on Asian immigration in the 19th century. As labor economist Selig Perlman boasted, "The anti-Chinese agitation in California, culminating as it did in the Exclusion Law of 1882, was undoubtedly the most important single factor in the history of American labor, for without it the entire country might have been overrun by Mongolian labor, and the labor movement might have become a conflict of races instead of one of classes" (Commons 1918–35, II: 252). Unions promoted maximum-hour laws for women, which had the effect of increasing unemployment and lowering the income of immigrant women workers (Landes 1980). The New York maximum-hours law for bakers, which the Supreme Court struck down in the *Lochner v. New York* (198 U.S. 45 [1905]), was similarly aimed at recent immigrant bakers (Bernstein 2005).

Although most black workers did not gain industrial employment as strikebreakers, and although most strikebreakers were not black, the image of the "black scab" was powerful (Whatley 1993, Arnesen 2003). Contrary to the image depicted by union supporters (see Noon 2004), black strikebreakers were neither villains nor dupes; strikebreaking was a rational and effective choice. "Black strikebreaking was nothing less than a form of working-class activism designed to advance the interests of black workers and their families," a labor historian recently observed. "In many instances a collective strategy as much as trade unionism, strikebreaking afforded black workers the means to enter realms of employment previously closed to them and to begin a long, slow climb up the economic ladder" (Arnesen 2003: 322).

The Union Quest for Legal Privilege

Black strikebreaking could be effective because the American law of labor relations protected the right of employers to hire whomever they pleased, and protected the right of workers to work for whomever they pleased. Unless workers had some peculiar skill or occupied some strategic place in the economy where the withdrawal of their services would cost employers dearly, their unions were weak. The strongest unions were among the workers who already had economic power. But it was virtually impossible for easily replaced, unskilled workers to win their demands by striking. The skilled railroad workers who formed the "brotherhoods"—the engineers and conductors, for example—had some of the earliest strong unions. They excluded blacks by explicit constitutional provision until the 1960s. They did not participate in the 1894 Pullman strike, led by the less skilled railway workers in Eugene V. Debs' American Railway Union. The ARU excluded blacks as well, and black workers formed an "Anti-Striker Railway Union" and helped break the strike. But the most significant factor in the failure of the Pullman strike was the injunction issued by a federal court, forbidding the strikers from interfering in the railroads' right to carry on their business, and their right to do so with replacement workers.

For the next 40 years, the AFL would campaign to change labor law so that its strikes could succeed. The legend continues to be perpetuated that the AFL was committed to "voluntarism." Unlike earlier labor federations that became absorbed in larger social and

political movements or parties, the story goes, the AFL simply wanted to be left alone, to focus on "bread and butter' issues of wages, hours, and working conditions. This was never the case. The federation supported a number of laws that would reduce competition in the labor market—immigration restriction, limitations on the labor of women and children, and a host of licensing and other regulatory barriers to entry into the labor market (see Bernstein 2001). As UMW President John Mitchell put it in 1903, "The trade union movement in this country can only make progress by identifying itself with the state" (Mitchell 1903: 219). Little by little in the Progressive Era, the federal and state governments began to empower labor unions, and this increased their power to discriminate against black workers. But for the most part these laws helped already-powerful workers, like the railroad brotherhoods and construction trades. Blacks continued to make inroads in unskilled industrial employment, and this accelerated as the "Great Migration" out of the South began just before the First World War. As during the Civil War draft riots, job competition during the war set off some of the worst race riots in American history, in East St. Louis in 1917 and Chicago in 1919. As the war came to a close and the federal government withdrew its pressure on American employers to bargain with unions, blacks played a significant role in the movement to return to the "open [nonunion] shop," which unionists resisted in a campaign for "industrial democracy."

Between the wars, relations between blacks and unions continued to be hostile. In 1919, black socialist A. Philip Randolph called the AFL "the most wicked machine for the propagation of race prejudice in the country" (Spero and Harris 1931: 390). Reflecting on the failure of the great steel strike of that year, communist William Z. Foster called blacks "a race of strikebreakers" (Foster 1920: 208). The NAACP reported in 1924 that "white union labor does not want black labor, and, secondly, black labor has ceased to beg admittance to union ranks because of its increasing value and efficiency outside of the unions." Since immigration had dwindled, the black worker was gaining "tremendous advantage. . . . He broke the great steel strike. He will soon be in a position to break any strike when he can gain economic advantage for himself" (NAACP 1924: 89). The National Urban League concluded in 1930 that the AFL had less appeal to Negroes now "than at any other time in its history" (Reid 1930: 32).

The New Deal and "Fair Representation"

The New Deal fundamentally altered the relationship of blacks and unions. Simply put, once the political and legal system began to favor unions and to make industrial unionism possible, black leaders and workers began to shift to support organized labor. As one historian put it, "When the New Deal politicized the level of American wages, African-American protest organizations . . . were forced to change their strategy from one of confrontation with organized labor to one of conciliation" (Whatley 1993: 550). As a contemporary observer remarked, "One of the most important qualities of effective minority group leadership is opportunism. This ability to take advantage of opportunities as they present themselves, properly used, can oftentimes compensate for numerical or material weakness. And minorities have a right to expect such opportunism in intelligent leaders" (Foner and Lewis 1978–84, VII: 18).

But this rapprochement was always tentative and conditional. The mass-production industrial unions that comprised the CIO (autos, steel, rubber) already had large numbers of black workers, so exclusion was not possible. (Though some white-only unions, like the railroad brotherhoods and building trades, continued to exclude.) And there is no question that the CIO was genuinely more committed to racial equality than the AFL. But unequal treatment continued to be a problem *within* these unions, in matters such as access to skilled jobs, seniority, and union leadership. The locus, but not the nature, of discrimination changed. White unionists' interest in "controlling the labor supply" by way of racial discrimination remained (Perlman 1951: 59).

Black organizations attempted to stop unions from using New Deal legislation to harm black workers. The NAACP warned that the National Labor Relations (Wagner) Act was "fraught with danger to Negro labor" and urged Senator Robert Wagner to add a nondiscrimination provision to his bill. Lester Granger, head of the National Urban League, cautioned black workers against "premature adulation" for the new industrial unions. He later called the Wagner Act "the worst piece of legislation ever passed by the Congress" (Moreno 2006: 172–73, 182). The New Deal had established industrial unions as a "countervailing power" to curb the perceived abuses of big business (Galbraith 1952). Over the next several decades, the federal government would have to establish further countervailing

powers to protect minorities against unions' abuse of power. This was the road to affirmative action.

In addition to the direct impact of union discrimination, union power had many indirect effects that harmed black (as well as other nonunion) workers. Unionization of American's "core" industries (such as autos and steel) ultimately reduced employment, reducing black opportunities to rise from the lower-paid "periphery" to the good core jobs. When unionization drove up labor costs in the coal-mining industry, for example, owners substituted capital for labor, and black workers bore the brunt of this "technological unemployment" (Woodrum 2007). Organized labor lobbied for higher minimum wage laws, which further increased black unemployment. (The black unemployment rate, previously about the same as the white rate, became regularly twice as high after World War II.) When they unionized unskilled jobs, unions made these jobs more attractive to white workers, who often took them though they possessed greater skills than the jobs required. While the impact of union power was clearer in the structure of job lines, promotion, seniority, and training, union leaders often claimed that discrimination in hiring—an employer prerogative—was the real culprit. But unionization raised the cost of labor and thus reduced the number of jobs, which was just the obverse way to control the labor supply (Simons 1944).

Labor economist W. H. Hutt had seen the power of white workers to transfer employment and income from excluded minorities to themselves in South Africa. He noted that "majorities under union protection are notoriously unconcerned about the harm wrought to those excluded, or the reduction caused in the aggregate income of the community" (Hutt 1973: 54).

All of these union or union-related interventions increased the need for race-based remedial intervention. Owen Fiss, a clerk to Justice Thurgood Marshall and later a law professor, noted the irony

> that the need for a fair employment law arises in part from the existence of other laws (such as minimum wage laws, laws protecting union hiring halls, laws limiting profit levels, and laws limiting entry) that impair the effectiveness of the market; by interfering with the market, these laws impair the capacity of the merit principle to protect itself. The need for the fair employment law, to the extent that it arises from statutes with a contrary effect, may simply reflect society's reluctance to

> abandon these other forms of government regulation—it wishes to have its cake and eat it too [Fiss 1971: 251–52].

During the world wars, the federal government promoted unionization and union membership soared. During the First World War it made a small effort to ensure fair treatment of black workers, principally through the establishment of a Division of Negro Economics within the Department of Labor (Gudza 1982). A more impressive effort was made during the World War II, when A. Philip Randolph's threat of a "march on Washington" led President Roosevelt to ban discrimination by government contractors (Reed 1991). His executive order established a President's Committee on Fair Employment Practices for enforcement—commonly called the FEPC. Though the Committee included both AFL and CIO presidents and other unionists, some of its hardest cases came from union discrimination—in railroads and shipyards in particular. The FEPC's ability to stop discrimination by either employers or unions was quite limited, but it was successful enough to provoke the ire of southern Democrats in Congress, who cut off its funding at the war's end. Liberals called for legislative enactment of a permanent FEPC for the next two decades.

The greatest potential blow to union discrimination came from the courts. In *Steele v. Louisville and Nashville Railroad* (323 U.S. 192 [1944]) and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen* (323 U.S. 210 [1944]), the Supreme Court held that unions had a duty of "fair representation" to the workers for whom they bargained. U.S. labor law's principle of "majority unionism" compelled an employer to bargain exclusively with whatever union was chosen by a majority of its employees—even if that union excluded blacks. Since federal legislation had given unions quasi-legislative powers, the Court held, the Constitution required these privileged bodies to provide equal protection to those they represented. However, the National Labor Relations Board did not use its administrative powers against union discrimination until the 1960s, so black workers had to sue individually and at their own expense (Sovern 1962: 574). Arthur Fletcher, assistant secretary of labor in the Nixon administration, later claimed that if such decisions had been enforced, no legislation dictating fair employment practices would have been necessary (Fletcher 1974: 26).

As blacks continued to migrate into urban and industrial areas, and as the postwar movement for racial equality grew, pressure on unions

to cease discrimination increased. The issue of civil rights divided southern unionists especially. While most national union leaders supported desegregation, and many southern businessmen did use the race issue to discourage unionization, support for segregation was common among the rank-and-file. As a leader of one of the White Citizens Councils put it, "The labor boys played a big part in the segregation effort. The business people would give lip service, but the labor people would get out and work" (Draper 1994: 24). This was due at least in part to the fact that the same economic forces that gave unions an interest in discrimination (limiting the supply of labor) gave employers an interest in equal opportunity (increasing the supply of labor). As Martin Luther King, Jr., put it in 1957, "With the growth of industry the folkways of white supremacy will necessarily pass away. Moreover, southerners are learning to be good businessmen, and as such realize that bigotry is costly and bad for business" (Moreno 2006: 224). Racial discrimination was just one of the abuses of power that tarnished the image of organized labor in the 1950s. Former Harvard Law School dean Roscoe Pound, a celebrated progressive legal philosopher, believed that unions had acquired the kind of overbearing power that business had before the New Deal. Unions, he said, were free to commit torts against persons and property, interfere with the use of transportation, break contracts, deprive people of the means of livelihood, and misuse trust funds, "things no one else can do with impunity. The labor leader and labor union now stand where the king and government . . . stood at common law" (Pound 1958).

The most difficult union-discrimination issue that black workers faced was that of seniority. If employers and unions agreed to open better jobs, heretofore reserved for whites, black workers often risked the job security of their many years in the lower ranks. Employers, fearful that blacks would not be qualified for the better jobs, required them to pass exams that white candidates had not been compelled to take. Such practices acted as a sort of "grandfather clause," by which discrimination in the past continued to inhibit black progress in a non-discriminatory present. When Congress was considering the fair employment title of the Civil Rights Act of 1964, this issue nearly derailed it. Opponents of fair employment legislation had often claimed that it would lead to preferential treatment and racial quotas to achieve racial balance in the work force. Senator Lister Hill, an Alabama Democrat, added that it would force employers to grant "super seniority" for blacks in merged job lines, or allow

black workers to "bump" white workers with more seniority. The act's advocates and labor leaders denied this but, to be certain, section 703(h) held that "it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority system." The AFL-CIO did not call for this amendment, which it regarded as merely amplifying what was already in the act. But the provision did more clearly safeguard the expectations of many of its white members.

Affirmative Action

The ink was hardly dry on the Civil Rights Act before bureaucrats and judges began to transform it from a colorblind, individual right to equal treatment into a color-conscious, group-based entitlement to equal outcomes (Belz 1991). Despite their support for the Civil Rights Act and the emerging concept of affirmative action, AFL-CIO officials bridled when these acts impinged upon established union privileges. "A basic conflict exists between labor union concepts and civil rights concepts," the assistant attorney general for civil rights said, "Something has to give" (O'Hanlon 1968: 170). Despite section 703(h), the Equal Employment Opportunity Commission (EEOC) and federal courts began to give black workers credit for past seniority, crafting the doctrine known as "the present effects of past discrimination." In *Franks v. Bowman* (424 U.S. 747 [1976]), the Supreme Court accepted the awarding of retroactive seniority in 1976, as it had accepted other extensions of the Civil Rights Act from fair employment to affirmative action, but reversed itself the next year in the Teamsters case (*International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324 [1977]). Seniority was the only part of the Civil Rights Act that the Court interpreted in line with the original intent of the statute, in all likelihood responding to the influence of organized labor as a liberal interest group (Belz 1991: 212).

Unions were similarly able to insulate themselves from the pinch of a program that was designed precisely with union discrimination in view, the "Philadelphia Plan." This plan had origins that went back to federal set-asides for black construction workers in the 1930s, and resurfaced in the presidential commissions that targeted racial discrimination among government contractors. The particular problem here was that the government contractors could not control the dis-

criminatory policies of the unions who provided their workers—the skilled construction unions being the worst offenders. During the Johnson administration, the Labor Department required construction contractors to provide data about the racial composition of their work forces, along with commitments to have a "representative number" of minorities in each trade. Union opposition, as well as the Government Accounting Office's judgment that it violated the rules of competitive bidding, caused the administration to abandon the plans. President Nixon revived them—out of a desire to foment discord between the labor and civil rights wings of the Democratic Party, his detractors claimed, erroneously (Moreno 2006: 299). The model "Philadelphia Plan" was soon extended to all cities, and then from the construction trades to all federal contractors—who employed about half of the American work force. The key requirement was the establishment of "goals and timetables" to increase minority employment. The U.S. Commission on Civil Rights observed in 1969 that the program "comes very close to embodying, if it does not actually do so, two principles in the field of civil rights which have long been resisted—quotas and preferential treatment" (Nathan 1969: 96). In 1972, as Nixon courted the political support of the "hard hats," his Labor Department did away with the Philadelphia Plan requirements for the construction trades, allowing them to devise voluntary "hometown plans." In another remarkable display of political power, the unions that gave rise to affirmative action escaped its impact after it had metastasized throughout the American economy. Though freed from Department of Labor quotas, the construction unions still faced EEOC and Department of Justice suits, with affirmative action litigation extending for decades.

The conflicts between blacks and unions abated as the 21st century approached. This was due chiefly to the passing away of the seniority problem, the collapse of private sector unions, and the rise of public sector unions. The generation of white workers who were "grandfathered" and had acquired seniority during the years that their unions were supposed to have been ensuring "fair representation" eventually retired and died, taking care of that problem. Discrimination in the construction unions may have continued, but whereas 84 percent of construction workers were union members in 1953, fewer than 20 percent were by 2000 (Bennett and Kaufman 2002). The United Steelworkers agreed in 1974 to set aside half of their skilled training slots for blacks, but five years after the Supreme

Court upheld this important piece of affirmative action, unionized steel employment had declined by 50 percent. The American economy became more competitive in the 1980s, and the Immigration Reform Act of 1965 (and its violation) increased competition in the labor market. At the same time, public employee unionism began to expand after state and federal laws began to permit it in the late 1950s. Public employee union membership rose sixfold in the 1960s; half of government employees were union members by 1980.

Racial discrimination was less of a problem in the public sector because public employers had little economic incentive to resist unionization, and they had powerful political incentives to promote it. Public employee unions had less reason to try to limit the labor supply than private sector unions (Lieberman 1980). However, there were notable conflicts between blacks and public sector unions. The 1968 Ocean Hill/Brownsville teachers strike in New York City, for example, had black-power ideological elements, and when taxpayers forced government-job retrenchment, seniority again became a racial issue. But public employee unions became increasingly solicitous of the interests of their minority members, and ardently embraced affirmative action. Private sector unions needed state power during the 20th century in order to succeed; they used that power to increase benefits (often referred to as the "private welfare state") for a diminishing number of (predominantly white) members. Today public sector unions are entirely dependent on state power. By increasing their numbers, public sector unions also increase the number of (increasingly nonwhite) voters who will sustain their power.

Conclusion

The problem of racial discrimination in organized labor in America was less solved than it was outgrown. The story of racial discrimination in the American labor movement confirms the view that unions act as cartels that attempt to limit the supply of labor and raise its price. An easily identified and culturally disfavored minority group provided a convenient category for exclusion. But most unions were unable to succeed without state power, and by the time that they acquired such power, blacks had already fought their way into the industrial workforce. Discrimination within, rather than exclusion from, unions then became the chief problem—one that spawned the policy of "affirmative action." Finally, the macroeconomic costs of

unions decimated the ranks of private sector unions. The syndicalist phase of American unionism appeared to have come to an end, and organized labor turned its attention to the public sector, where different economic and historical factors obtained.

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